



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Ms. Rose-Michel Munguia
Legal Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR96-1038

Dear Ms. Munguia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100029.

The General Services Commission (the "commission") received a request for documents relating to violations of a particular lease. You have submitted the requested documents to this office for review. You contend that these documents are excepted from disclosure under section 552.103 of the Government Code.

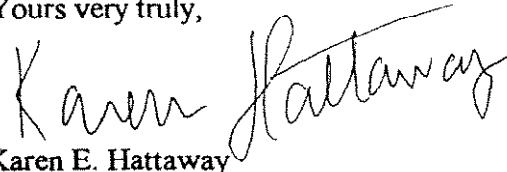
Section 552.103(a) excepts from disclosure information relating to litigation to which the commission is or may be a party. The commission has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the commission must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

Having investigated the circumstances giving rise to the request for information, you believe that "in light of the nature and source of the request, it is reasonable to presume that the state may be a party to civil litigation." The Open Records Act prohibits consideration of the motives of the requesting party. Open Records Decision Nos. 542 (1990), 508 (1988). Furthermore, section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 518 (1989), 328 (1982). Because you have not presented us with concrete evidence that the commission reasonably anticipates litigation, you have not met your burden under section 552.103.

You also note that the requestor has filed a workers' compensation claim against the Texas Department of Health. You express concern that the Department of Health may have a section 552.103 interest in the requested information. Section 552.103 applies only where the governmental body claiming section 552.103 is a party to or reasonably anticipates being a party to litigation. See Open Records Decision Nos. 392 (1983), 132 (1976). Therefore, the commission may not withhold information from disclosure based on the fact that the Department of Health may have a section 552.103 interest in the information. We conclude that the requested information is not excepted from disclosure under section 552.103. The commission must release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100029

Enclosures: Submitted documents

cc: Mr. Roger Bresnahan
Law Offices of Pat Maloney, P.C.
239 East Commerce Street
San Antonio, Texas 78205
(w/o enclosures)